House Bill 1344

By: Representatives Golick of the 34th, Tumlin of the 38th, Benton of the 31st, and Hill of the 21st

A BILL TO BE ENTITLED

AN ACT

1   To amend Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia

2   Annotated, relating to pawnbrokers, so as to provide for the return of sales surplus to the

3   debtor; to provide for penalties; to provide for disclosures; to provide for related matters; to

4   provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

5   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6   **SECTION 1.**

7   Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated,

8   relating to pawnbrokers, is amended by revising subsection (a) of Code Section 44-12-131,

9   relating to duration of pawn transactions and pawn transactions involving motor vehicles, as

10 follows:

11   "(a)(1) All pawn transactions shall be for 30 day periods but may be extended or

12   continued for additional 30 day periods.

13   (2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during

14   a pawn transaction or during any extension or continuation of the pawn transaction.

15   (3)(A) Unless otherwise agreed, a pawnbroker has upon default the right to take

16   possession of and resell the motor vehicle. In taking possession, the pawnbroker or his

17   or her agent may proceed without judicial process if this can be done without breach

18   of the peace or may proceed by action. Every aspect of the resale of a motor vehicle

19   repossessed by a pawnbroker, including the method, manner, time, place, and other

20   terms, shall be commercially reasonable; provided, however, that a pawnbroker shall

21   not purchase a motor vehicle repossessed pursuant to any pledge or pawn of said motor

22   vehicle in favor of said pawnbroker.

23   (B) A pawnbroker who repossesses and sells a motor vehicle held as security for a

24   pawn transaction shall, upon the sale of said motor vehicle, return to the pledgor or

25   seller any surplus remaining after the payment to the pawnbroker of all expenses of

26   repossession and sale allowed by this article.

1   (4)(A) During the first 90 days of any pawn transaction or extension or continuation

2   of the pawn transaction, a pawnbroker may charge for each 30 day period interest and

3   pawnshop charges which together equal no more than 25 percent of the principal

4   amount advanced, with a minimum charge of up to $10.00 per 30 day period.

5   (B)   On any pawn transaction which is continued or extended beyond 90 days, a

6   pawnbroker may charge for each 30 day period interest and pawnshop charges which

7   together equal no more than 12.5 percent of the principal amount advanced, with a

8   minimum charge of up to $5.00 per 30 day period.

9   (C)   In addition to the charges provided for in subparagraphs (A) and (B) of this

10   paragraph, in a pawn transaction or in any extension or continuation of a pawn

11   transaction involving a motor vehicle or a motor vehicle certificate of title, a

12   pawnbroker may charge the following:

13   (i) A fee equal to no more than any fee imposed by the appropriate state to register

14   a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a

15   lien;

16   (ii) No more than $5.00 per day in storage fees, but only if an actual repossession

17   pursuant to a default takes place on a vehicle which was not already in the

18   pawnbroker´s possession and only for each day the pawnbroker must actually retain

19   possession of the motor vehicle; ~~and~~

20   (iii) A repossession fee of $50.00 within 50 miles of the office where the pawn

21   originated, $100.00 within 51 to 100 miles, $150.00 within 101 to 300 miles and a fee

22   of $250.00 beyond 300 miles, but only if an actual repossession pursuant to a default

23   takes place on a vehicle which was not already in the pawnbroker´s possession~~.~~; and

24   (iv) The reasonable expenses incurred by a pawnbroker in connection with the sale

25   of a repossessed motor vehicle, not otherwise prohibited by law, including reasonable

26   attorneys´ fees and other legal expenses.

27   (D) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item

28   to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and

29   mailing costs, plus a handling fee equal to not more than 50 percent of the actual

30   shipping and mailing costs.

31   (E) In the event the pledgor or seller has lost or destroyed the original pawn ticket, a

32   pawnbroker may, at the time of redemption, charge a fee equal to not more than $2.00.

33   (5) No other charge or fee of any kind by whatever name denominated, including but not

34   limited to any other storage fee for a motor vehicle, shall be made by a pawnbroker

35   except as set out in paragraph (4) of this subsection.

1   (6) No fee or charge provided for in this Code section may be imposed unless a

2   disclosure regarding that fee or charge has been properly made as provided for in Code

3   Section 44-12-138.

4   (7)(A) Any interest, fees, or charges collected which are undisclosed, improperly

5   disclosed, or in excess of that allowed by this subsection may be recovered by the

6   pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

7   (B) In any such action in which the pledgor or seller prevails, the court shall also award

8   reasonable attorneys´ fees, court costs, and any expenses of litigation to the pledgor or

9   seller.

10   (C) Before filing an action under this Code section, the pledgor or seller shall provide

11   the pawnbroker with a written notice by certified mail or statutory overnight delivery,

12   return receipt requested, that such an action is contemplated, identifying any fees or

13   charges which the pledgor or seller contends are undisclosed, improperly disclosed, or

14   in excess of the fees and charges allowed by this Code section. If the court finds that

15   during the 30 days following receipt of this notice the pawnbroker made a good faith

16   offer to return any excess, undisclosed, or improperly disclosed charges, the court shall

17   award reasonable attorneys´ fees, court costs, and expenses of litigation to the

18   pawnbroker.

19   (D) No action shall be brought under this Code section more than two years after the

20   pledgor or seller knew or should have known of the excess, undisclosed, or improperly

21   disclosed charges."

22   **SECTION 2.**

23   Said part is further amended by striking "or" at the end of paragraph (7); by striking the

24   comma at the end of paragraph (8) and inserting in lieu thereof "; or"; and by adding a new

25   paragraph (9) immediately following paragraph (8) of subsection (a) of Code Section

26   44-12-137, relating to prohibited acts and penalties in pawn transactions, as follows:

27   "(9) Fail to disclose the pledgor´s or seller´s right to receive any surplus remaining after

28   payment to the pawnbroker of the reasonable expenses of repossession and sale of a

29   motor vehicle repossessed and sold in satisfaction of a pawn transaction,"

30   **SECTION 3.**

31   Said part is further amended by revising paragraphs (16) and (17) of subsection (b) of Code

32   Section 44-12-138, relating to restrictions on advertising and disclosure statements in pawn

33   transactions, as follows:

1   "(16) A statement that any costs to ship the pledged items to the pledgor or seller can be

2   charged to the pledgor or seller, along with a handling fee to equal no more than 50

3   percent of the actual costs to ship the pledged items; ~~and~~

4   (17) A statement that a fee of up to $2.00 can be charged for each lost or destroyed pawn

5   ticket~~.~~; and

6   (18) A statement that the pledgor or seller has the right to receive any surplus remaining

7   after payment to the pawnbroker of the reasonable expenses of repossession and sale of

8   a motor vehicle repossessed and sold in satisfaction of a pawn transaction."

9   **SECTION 4.**

10   This Act shall become effective on July 1, 2008, and shall apply to all pawn transactions

11   entered into on or after that date.

12   **SECTION 5.**

13   All laws and parts of laws in conflict with this Act are repealed.